

HOTCHKISS AND FORBES.

JANUARY 4, 1832.

Mr. DAVIS, of Massachusetts, from the Committee on Commerce, made the following

REPORT:

The Committee on Commerce beg leave to submit to the House of Representatives the following report:

Russell Hotchkiss and others, merchants, of the city of New Haven, in the State of Connecticut, being the owners of the brig *Stranger*, whereof Daniel P. Clark was master, did, in March, 1831, despatch said vessel on a voyage to the West Indies, from said port of New Haven and back again, with one Samuel Gelleland as second mate thereof: that, on the 23d day of May following, the said vessel, having performed her voyage, entered the port of New Haven; and the collector of the customs there demanded and received of the petitioners fifty cents a ton on said vessel, as tonnage duty, because said Gelleland, being an officer of said brig, was a foreigner, and not naturalized.

An act of Congress, passed the first day of March, 1817, provides, that there shall be paid on all vessels of the United States, which shall be entered in the United States from any foreign port or place, a duty at the rate of six cents a ton, if *the officers* and at least two-thirds of the crew of such vessel be proved, to the satisfaction of the collector, citizens of the United States, or persons not the subjects of any foreign prince or State, otherwise there shall be paid on such vessels fifty cents a ton.

Another act of Congress, passed the 30th day of May, A. D. 1830, provides, that, from and after the first day of April then next ensuing, no duties upon the tonnage of ships and vessels of the United States, of which *the officers* and two-thirds of the crew shall be citizens of the United States, shall be levied and collected.

It appears by the statement of the petitioners, that Gelleland represented himself to them as a citizen of the United States, born in the State of Pennsylvania; and also so represented himself to the collector of the port, as appears by his certified list of the officers and crew of said vessel.

They further represent, that the misrepresentation was unknown to them until after the voyage was completed, and the liability to pay the tonnage duty had accrued, when they first came to the knowledge that he was a subject of the crown of Great Britain.

In addition to this, the collector certifies, that, "from his personal knowledge of all the facts, he has not a doubt that the petitioners state correctly."

Upon these facts, it is clear, that, under the provisions of the acts of Congress above recited, the vessel was liable to the tonnage duty demanded, because the said Gelleland was one of the officers, and a foreigner, and for this cause alone; for if he had been an American citizen, she would not have been liable for any duty.

The important question, therefore, is, did Gelleland practise the imposition imputed to him? It is very certain that he satisfied the collector that he was a native citizen of the United States; for he so certifies on the back of the original list of the crew. He also satisfied the captain of the same fact, as appears by his certificate on the same document.

The only question, therefore, which can be raised, is, whether the petitioners were privy to the misrepresentation? The committee see no reason for believing this, as the petitioners are men of integrity and known good character in the community where they live. When we add to this, that their interest clearly required that the officers should be American, there would seem to be no adequate motive for incurring the hazard incident to employing a foreigner for the third officer of a small vessel. Besides there does not appear in the end to have been any desire or wish manifested to conceal the fact when it came to their knowledge.

Under the circumstances of the case, therefore, the committee have come to the conclusion that Gelleland obtained his place on board said vessel by misrepresentation; and the petitioners, having been subjected to the payment of the duties, in consequence thereof, ought to be relieved; and report a bill for that purpose.